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MICHAEL RUPAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1468

M. MORRIS & SON COMPANY, INC., *Petitioner,*

v.

BURGESS CONSTRUCTION COMPANY, ET AL., *Respondents.*

RESPONDENT'S OBJECTION TO MOTION BY THE
UTAH CHAPTER OF THE ASSOCIATED GENERAL
CONTRACTORS OF AMERICA FOR LEAVE
TO FILE BRIEF AMICUS CURIAE

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Respondent, BURGESS CONSTRUCTION COMPANY, an Alaskan contractor, objects, pursuant to Rule 42(3), to the filing of a Brief Amicus Curiae by the Utah Chapter of the Associated General Contractors of America. Respondent withholds consent to Applicant's filing for the following reasons:

1. Applicant has no interest in this matter other than to support Petitioner, M. MORRIN & SONS COMPANY, INC., a Utah contractor and an influential member of the Applicant Chapter.
2. Applicant has not presented, nor can it present, any relevant questions of law or fact that have not been raised by Petitioner.

3. Applicant has no reason to believe that all relevant questions will not be adequately presented or that Applicant is uniquely qualified to contribute special expertise or enlightenment.

Applicant's motion states that its essential interest is to relate to the Court alleged conflicts between the decision of the United States Court of Appeals for the Tenth Circuit and other judicial precedent and to explain the ramifications of that decision for the construction industry. However, Applicant's Brief cites only three cases, all from the Court of Claims, two of which are found in the Petition for Writ of Certiorari. The additional case, *Merritt-Chapman & Scott Corp. v. United States*, 439 F.2d 185 (Ct. Cl. 1971), involved a claim against the Government under a contract which "unequivocally represented" with a "flat declaration" that the construction site would be made available on a date certain.¹ Unlike these three administrative cases, the instant case for breach of contract involved a contract which contemplated and excused delays. Thus, *Merritt-Chapman*, like the cases raised by Petitioner, is similarly distinguishable and merely cumulative.

Like Petitioner, Applicant erroneously contends that the instant case concerns interpretation of a standard contractual provision which has potentially broad ramifications. Applicant's brief sets forth the critical provisions found in Exhibit "B" to the subcontract and shows that this addition was drawn by the parties for the particular project and did not establish a certain date for site availability but expressly provided for delays in site access and time extensions equivalent to such delays.

¹ 439 F.2d at 191.

The Court of Appeals decision carefully considered all issues and properly interpreted this specially drawn Exhibit covering site access for the subcontractor. This decision creates no conflict with Applicant's cases and produces no far ranging ramifications for the construction industry.²

CONCLUSION

The Applicant organization has no valid interest and presents only a redundant voice in support of Petitioner, an organization member. Applicant's motion should be denied.

Respectfully submitted,

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² As the Court of Appeals correctly noted, "this case does not involve the standard form clauses. The dispute is over a clause drawn and added to the contract by the parties." *Burgess Construction Co. v. M. Morrin & Son Co.*, 526 F.2d 108, 114 n.3 (10th Cir. 1975).